

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

COMMODITY FUTURES TRADING
COMMISSION, and

ALABAMA SECURITIES COMMISSION,
STATE OF ALASKA, ARIZONA
CORPORATION COMMISSION,
CALIFORNIA COMMISSIONER OF
BUSINESS OVERSIGHT, COLORADO
SECURITIES COMMISSIONER, STATE
OF DELAWARE, STATE OF FLORIDA,
OFFICE OF THE ATTORNEY GENERAL,
STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION, OFFICE OF
THE GEORGIA SECRETARY OF STATE,
STATE OF HAWAII, SECURITIES
ENFORCEMENT BRANCH, IDAHO
DEPARTMENT OF FINANCE, INDIANA
SECURITIES COMMISSIONER, IOWA
INSURANCE COMMISSIONER
DOUGLAS M. OMMEN, OFFICE OF THE
KANSAS SECURITIES COMMISSIONER,
KENTUCKY DEPARTMENT OF
FINANCIAL INSTITUTIONS, MAINE
SECURITIES ADMINISTRATOR, STATE
OF MARYLAND EX REL MARYLAND
SECURITIES COMMISSIONER,
ATTORNEY GENERAL DANA NESSEL
ON BEHALF OF THE PEOPLE OF
MICHIGAN, MISSISSIPPI SECRETARY
OF STATE, NEBRASKA DEPARTMENT
OF BANKING & FINANCE, OFFICE OF
THE NEVADA SECRETARY OF STATE,
NEW MEXICO SECURITIES DIVISION,
THE PEOPLE OF THE STATE OF NEW
YORK BY LETITIA JAMES, ATTORNEY
GENERAL OF THE STATE OF NEW
YORK, OKLAHOMA DEPARTMENT OF
SECURITIES, SOUTH CAROLINA
ATTORNEY GENERAL, SOUTH
CAROLINA SECRETARY OF STATE,
SOUTH DAKOTA DEPARTMENT OF
LABOR & REGULATION, DIVISION OF

**PLAINTIFFS' RECOMMENDATION
FOR A TEMPORARY RECEIVER**

Case No.: **8-20-CV-2910-L**

Judge: Judge Sam A. Lindsay

INSURANCE, COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF
COMMERCE AND INSURANCE, STATE
OF TEXAS, WASHINGTON STATE
DEPARTMENT OF FINANCIAL
INSTITUTIONS, WEST VIRGINIA
SECURITIES COMMISSION, AND STATE
OF WISCONSIN.

Plaintiffs,

v.

TMTE, INC. a/k/a METALS.COM, CHASE
METALS, INC., CHASE METALS, LLC,
BARRICK CAPITAL, INC., LUCAS
THOMAS ERB a/k/a LUCAS ASHER a/k/a
LUKE ASHER, and SIMON BATASHVILI,

Defendants;

and

TOWER EQUITY, LLC,

Relief Defendant.

Plaintiffs Commodity Futures Trading Commission and the Alabama Securities
Commission, State of Alaska, Arizona Corporation Commission, California Commissioner of
Business Oversight, Colorado Securities Commissioner, State of Delaware, State of Florida,
Office of the Attorney General and State of Florida, Office of Financial Regulation, Office of the
Georgia Secretary of State, State of Hawaii, Securities Enforcement Branch, Idaho Department
of Finance, Indiana Securities Commissioner, Iowa Insurance Commissioner Douglas M.
Ommen, State of Iowa, Office of the Kansas Securities Commissioner, Kentucky Department of
Financial Institutions, Maine Securities Administrator, State of Maryland Ex Rel the Maryland
Securities Commissioner, Attorney General Dana Nessel on Behalf of the People of Michigan,

Mississippi Secretary of State, Nebraska Department of Banking & Finance, Office of the Nevada Secretary of State, New Mexico Securities Division, The People of the State of New York by Letitia James, Attorney General of the State of New York, Oklahoma Department of Securities, South Carolina Attorney General and South Carolina Secretary of State, South Dakota Department of Labor & Regulation, Division of Insurance, Commissioner of the Tennessee Department of Commerce and Insurance, State of Texas, Washington State Department of Financial Institutions, West Virginia Securities Commission, and State of Wisconsin respectfully recommend that the Court appoint **Kelly Crawford** as Temporary Receiver and **Peter Lewis** as his counsel.

Mr. Crawford and Mr. Lewis are extremely experienced. Mr. Crawford has served as a Receiver in a number of complex commodities and securities federal court matters. Their biographies are attached.

Dated: September 22, 2020

Respectfully submitted,

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Awards

Named a "Texas Super Lawyer" by Thomson Reuters, 2009-2019

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Kelly M. Crawford

Biography

Mr. Crawford has more than 33 years of experience in handling complex commercial litigation, including securities fraud, receiverships, oil and gas, employment, insurance and general business disputes.

Representative Matters:

Mr. Crawford has successfully represented clients in a wide range of complex commercial litigation, including cases involving:

- Securities Fraud
- Oil and Gas Fraud
- Software licensing issues
- Employment disputes, including proprietary information, agreements and covenants not to compete
- Stock option agreements
- Copyright issues
- Insurance coverage disputes
- Shareholder disputes
- Partnership disputes
- Franchisor/Franchisee disputes
- Real estate disputes
- Telecommunication issues
- Creditors asserting claims in bankruptcy
- ERISA

Receiverships:

Federal Courts in the Northern, Southern, Eastern and Western districts of Texas and in the Southern District of New York have appointed Mr. Crawford to serve as Receiver in significant securities or commodities fraud cases. In serving as Receiver, Mr. Crawford has worked extensively with the Securities and Exchange Commission and U.S. Commodity Futures Trading Commission, and assisted law enforcement agencies such as the Secret Service, the Federal Bureau of Investigation, United States Marshals, and the United States Attorney's Office. The Office of the Attorney General for the State of Texas has used Mr. Crawford as a Receiver to recover multi-million dollar judgments. Secured lienholders have also used Mr. Crawford as a Receiver. In addition, Mr. Crawford has served as the Receiver or the attorney for the Receiver in significant receivership issues appealed to the Fifth Circuit Court of Appeals, resulting in published opinions.

Securities and Exchange Commission v. W. Neil "Doc" Gallagher, et al; No. 3:19-CV-575-C; In the United States District Court for the Northern District of Texas, Dallas Division – Counsel to the Receiver.

Park Place Motorcars, Ltd., et al. v. Greg Duncan, et al; No. DC-13-08535; In the 116th Judicial District Court of Dallas County, Texas – Appointed as Receiver in August, 2018 to examine assets of Defendant to pay sanctions award to Plaintiff.

State of Texas v. EID Corp., et al; No. 1-GV-13-000169; In the 419th Judicial District Court of Travis County, Texas – Appointed as Receiver in February, 2015 to recover assets to pay to State of Texas as judgment creditor.

State of Texas v. Big Ben Convenience Stores – El Paso, Inc., and Ben Babe Parks; No. D-1-GV-12-000753; In the 353rd Judicial Court of Travis County, Texas – Appointed as Receiver in May, 2014 to recover assets to pay to State of Texas as judgment creditor.

State of Texas v. Trinidad Petroleum, Inc., et al; No. D-1-GV-03-004692; In the 200th Judicial District Court of Travis County, Texas – Appointed as Receiver in March, 2014 to recover assets to pay to State of Texas as judgment creditor.

State of Texas v. Desana Development Corporation, et al; No. D-1-GV-10-3079; In the 126th Judicial District Court of Travis County, Texas – Appointed as Receiver in August, 2013 to recover assets to pay to State of Texas as judgment creditor.

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Securities and Exchange Commission v. Kevin White, et al.; (Judge Schell); Civil Action No. 4:13-CV-383; In the United States District Court for the Eastern District of Texas, Sherman Division – Appointed Receiver in July, 2013 in \$7.2 million foreign currency trading scheme. Return to investors to date is 52%.

U.S. Commodity Futures Trading Commission v. Kevin White, et al.; (Judge Schell); Civil Action No. 4:13-CV-382; In the United States District Court for the Eastern District of Texas, Sherman Division – Appointed Receiver in July, 2013 in \$7.2 million foreign currency trading scheme. Return to investors to date is 52%.

State of Texas v. Taxmasters , Inc., TMIRS Enterprises, Ltd., TM GP Services, LLC, d/b/a Taxmasters, and Patrick R. Cox, Individually; No. D-1-GV-10-000486; In the 200th Judicial District Court of Travis County, Texas – Appointed as Receiver in January, 2013 to recover assets to pay to State of Texas as judgment creditor.

U.S. Commodity Futures Trading Commission v. ProfitStars Int'l Corp., et al.; (Judge Engelmayer); Civil Action No. 1:11-CV-07742 in the United States District Court for the Southern District of New York – Appointed as Receiver in November, 2011 to recover of approximately \$2.5 million and distribute the monies to a pool of Forex investors.

State of Texas v. James L. Watts, et al.; (Judge Orlinda Naranjo); Civil Action No. D-1-GV-07-000295 in the 419th Judicial District Court of Travis County, Texas - Appointed as Receiver and Master in Chancery in October, 2011 to recover assets to pay to State of Texas as judgment creditor.

U.S. Commodity Futures Trading Commission v. Financial Robotics, Inc., et al.; (Judge Rosenthal); Civil Action No. 4:11-CV-2446 in the United States District Court for the Southern District of Texas, Houston Division - Appointed as Receiver in June, 2011 in \$9 million solicitation fraud scheme.

Securities and Exchange Commission v. Rockwell Energy of Texas, LLC, et al.; (Judge Ellison); Civil Action No. 4:09-cv-4080 in the United States District Court for the Southern District of Texas, Houston Division - Appointed as Special Master in May, 2011 in \$5 million oil and gas scheme.

U.S. Commodity Futures Trading Commission v. Richard D. Theye and Micind Capital Management, Inc. (Judge Sparks); Civil Action No. 1:10-CV-3855 in the United States District Court for the Western District of Texas, Austin Division - Appointed as Receiver in August, 2010 in \$6 million commodity pool operated as a Ponzi scheme.

Securities & Exchange Commission v. Jon C. Ginder, Northamerican Energy Group, Inc., et al. (Judge Lake); Civil Action No. 4:10-CV-2867 in the United States District Court for the Southern District of Texas, Houston Division - Appointed as Receiver in August, 2010 of oil and gas company that owned working interests and oil and gas leases.

Securities & Exchange Commission v. Alan Todd May and Prosper Oil & Gas, Inc., a/k/a Prosper Energy Inc. (Judge Lindsay); Civil Action No. 3:10-CV-0425 in the United States District Court for the Northern District of Texas, Dallas Division - Appointed as Receiver in March, 2010 in \$6 million Ponzi scheme operated by an oil and gas company through the sale of royalty interests.

U.S. Commodity Futures Trading Commission v. M25 Investments, Inc., M37 Investments, LLC, Scott P. Kear, Sr., Jeffrey L. Lyon, and David G. Seaman; (Judge Lynn); Civil Action No. 3:09-CV- 1831 in the United States District Court for the Northern District of Texas, Dallas Division - Appointed as Receiver in September, 2009 in \$8 million foreign currency fraud.

Securities & Exchange Commission v. Paul D. Poetter, 4309, Inc., 4309 Acquisition Trust, and AMS-TEC Acquisition Trust; (Judge Schneider); Civil Action No. 6:09-CV-398 in the United States District Court for the Eastern District of Texas, Tyler Division - Appointed as Receiver in October, 2009 in \$3 million investment scheme involving 2,200 investors.

Securities & Exchange Commission v. Star Exploration, Inc., James T. Gurgainers, et al.; (Judge O'Connor); Civil Action No. 3:08-CV-2248 in the United States District Court for the Northern District of Texas, Dallas Division – Appointed as Receiver in December, 2008 in \$14 million oil and gas scheme.

U.S. Commodity Futures Trading Commission v. George D. Hudgins, individually and d/b/a George D. Hudgins, L.L.C.; (Judge Davis); Civil Action No. 6:08-CV- 0187 in the United States District Court for the Eastern District

of Texas, Tyler Division – Appointed as Receiver in May, 2008 in \$72 million commodities pool trading scheme. Return to investors was approximately 38 percent.

Securities & Exchange Commission v. Petrosite Assets, Inc., Ivan Dearaujo and Wesley Harbison, Jr. (Judge Godbey); Civil Action No. 3:06-CV-1611-N in the United States District Court for the Northern District of Texas, Dallas Division – Appointed as Receiver in September, 2006 in oil and gas and jewelry investment scheme.

Securities & Exchange Commission v. Premium Income Corporation, et al.; (Judge Boyle); Civil Action No. 3:05-CV-0415 in the United States District Court for the Northern District of Texas, Dallas Division – Appointed as Receiver in March, 2005 in \$11 million foreign currency exchange scheme. Return to investors was approximately 37 percent.

Securities & Exchange Commission v. Resource Development International, LLC, et al.; (Judge Buchmeyer); Civil Action No. 3:02-CV-0605-R in the United States District Court for the Northern District of Texas, Dallas Division – Served as counsel to Receiver in \$73 million Ponzi scheme involving more than 1,500 investors.

Securities & Exchange Commission v. C-Tech, L.L.P. and Robert Schlotterbeck; (Judge Solis); Civil Action No. 3:01-CV-2542-P in the United States District Court for the Northern District of Texas, Dallas Division – Appointed as Receiver in \$4 million oil and gas venture. Return to investors was more than 40 percent.

Securities & Exchange Commission v. Benjamin Franklin Cook, individually and dba Dennel Finance Limited, et al.; (Judge Buchmeyer); Civil Action No. 3:99-CV-0571-R in the United States District Court for the Northern District of Texas, Dallas Division – Served as counsel to Receiver in \$35 million Ponzi scheme where return to investors was approximately 60 percent.

Professional Involvement:

- Member, State Bar of Texas
- Member, Dallas Bar Association
- Founding Member, Board of Directors of National Association of Federal Equity Receivers
- Chairman, Board of Directors of Interfaith Housing Coalition (2011-2012)

Publications and Speeches:

- Co-Author of "The Dilemma of In-House Counsel as Whistleblower: When and Where to Blow the Whistle?" published by Thomson Reuters in the *Securities Regulation Law Journal*, Fall, 2018.
- Spoke at course for FBI agents and other members of law enforcement sponsored by the Economic Crimes Unit of the FBI, "Law Enforcement and Federal Receiverships: Maximizing Recoveries for Victims of Financial Fraud," August 13, 2018
- Panelist in 2017 for "Receiver Training Camp, Second Quarter" at annual conference of National Association of Federal Equity Receivers in Miami, Florida.
- Co-Author of "Broadcasting Lies: Broadcaster Liability in Consumer Fraud, Part 1", published in the June, 2015 Commercial Fraud Committee newsletter, American Bankruptcy Institute.
- Spoke at Collin County Bench Bar Conference, "Wright v. Aspen – A Look From Both Sides at Texas Securities Fraud", May 15, 2015.
- Spoke at "Receiverships in Texas 2011" seminar sponsored by the State Bar of Texas, November 4, 2011.
- "Unlocking the Door to a Receiver's Arsenal: A Receiver's Best Weapons," written by Kelly Crawford and Charlene Koonce for "Receiverships in Texas 2011" seminar sponsored by the State Bar of Texas, November 4, 2011.
- Panelist in 2002 and in 2010 on topic of Receiverships presented at the Annual Southwest Securities Enforcement Conference sponsored by The Fort Worth District Office of the Securities and Exchange Commission.
- Note, *Domangue v. Eastern Airlines*, 722 F.2d 256 (5th Cir. 1984), 50 J. Air L. 375 (1985).

Honors and Awards:

- Awarded the Hatton W. Sumners scholarship to attend the SMU School of Law
- Editor in Chief of the Journal of Air Law and Commerce
- Order of the Coif
- Order of Barristers
- Awarded the Best Brief Award for the Moot Court competition
- Appointed by the Governor of New Mexico to serve as an ex-officio member of the Board of Educational Finance
- Sustaining Life Fellow of the Texas Bar Foundation
- Recognized "Texas Super Lawyer" by Thomson Reuters, 2009 - 2019
- Recognized by D Magazine as "Best Lawyers in Dallas"
- Selected as one of Texas' Top Rated Lawyers for 2015-2017 in Bankruptcy, Commercial Litigation and Insurance Law by Legal Leaders Magazine
- Recognized as one of the 2013 Top Rated Lawyers in Commercial Litigation by The American Lawyer, Corporate Counsel, Martindale-Hubbell, and national Law Journal.

Education & Professional Background

- Admitted, Texas
- United States District Court for all districts in the State of Texas
- Fifth Circuit Court of Appeals
- Admitted, New Mexico

J.D., (cum laude), Southern Methodist University School of Law, 1986

B.A., (cum laude), Government/Journalism, New Mexico State University, 1982

Mr. Crawford served as Student Body President at NMSU and was an ex-officio member of the Board of Regents.

Reported Cases:

Mr. Crawford's successful experience in handling lawsuits is reflected in the following reported cases in which Mr. Crawford served as counsel or Receiver:

- Crawford v. Silette, 608 F. 3d 275 (5th Cir. 2013)
- Warfield v. Byron, 436 F. 3d 551 (5th Cir. 2006).
- Seawright v. Charter Furniture Rental, Inc., 39 F. Supp. 2d 795 (N.D. Tex. 1999), where the Court found that "lead counsel for Charter, Kelly Crawford, is an experienced, able practitioner who specializes in the area of commercial litigation, including employment disputes ... The Court found the quality of their written work to be excellent. Their rates ...certainly comport with the going rate for attorneys in this district and division with their qualifications and experience. In fact, the hourly rates are on the low side." 39 F.2d at 807.
- Clark v. Fitzgibbons, I 05 F.3d 1049 (5th Cir. 1997).
- Christopher v. Diamond Benefits Life Ins. Co., 35 F.3d 232 (5th Cir. 1994).

EXHIBIT 2

Peter C. Lewis

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PARTNER

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Overview

Peter C. Lewis, a partner in the firm's Dallas office, has over 36 years of experience devoted to business reorganizations, creditors' rights, business litigation and business transactions with particular emphasis on business bankruptcies, workouts and debt restructurings, complex business litigation and disputes, commercial collections/fair debt collection

defense, receiverships as well as public finance. Prior to joining the firm, Mr. Lewis was a partner at one of the largest (Dallas-based) law firms in the country as well as another national law firm. He has also served as outside general or national counsel for small to major manufacturing/ service companies, is AV rated by his peers (highest possible rating in both legal ability and ethical standards) and has been previously cited as one of only 176 attorneys nationwide for providing superior client service to Fortune 100 companies and was named one of D Magazine's Best Lawyers in Dallas for 2018.

Practice Areas

Banking

- Collections
- Banking Litigation & Foreclosures
- Loan Workouts
- Loan Negotiation & Documentation
- Regulatory Research

Bankruptcy

- Bankruptcy Chapter 11/Chapter 7
- Bankruptcy Litigation/Transactions
- Chapter 7 Trustee Representation
- Collections/Creditors Rights

Construction

- Construction Litigation
- Contract Negotiation
- Delay & Impact Claims
- Design Malpractice
- Government Contracts
- Lien & Bond Claims

Corporate & Business

- Contract Drafting & Negotiation
- Corporate Entity Disputes
- Corporate Finance
- Corporate Governance
- Corporate Reorganization
- Direct Selling/ Multi-Level Marketing
- Entity Selection & Business Formation
- Joint Ventures & Partnerships

- Shareholder Disputes
- Venture Capital Transactions

Intellectual Property

- Copyright Litigation
- E-Commerce
- Internet & Social Media
- Licensing & Technology Transfers
- Media & Entertainment
- Trademark Prep & Prosecution
- Trade Secret Litigation
- Trademark Litigation

Litigation

- Banking Litigation & Foreclosures
- Construction Litigation
- Computer Fraud & Privacy Litigation
- Copyright Litigation
- Cyber Insurance Coverage & Litigation
- Direct Sales & Regulatory Matters
- Employment Litigation
- Insurance Defense
- Oil & Gas Litigation
- Product Liability Litigation
- Professional Liability
- Real Estate Litigation
- Securities Fraud Litigation
- Securities Litigation & Arbitration
- State & Federal Appeals
- Transfer Tax and Probate Litigation
- Trade Secret Litigation
- Trademark Litigation

Taxation

- Corporate & Partnership Taxation
- Federal Taxation
- Franchise Taxation
- International Tax Planning
- Property Tax Disputes
- Sales & Local Taxation

Publications

Admissions

- U.S. District and/or Bankruptcy Courts for the Northern District, Eastern, Western and Southern Districts of Texas
- Third Circuit Courts of Appeals
- Fifth Circuit Court of Appeals

- Experience
- Associations
- Education
- Community
- Honors

Experience

Over the past 36 years, has represented companies, shareholders/investors, secured and unsecured creditors, asset purchasers, pre-petition lenders and DIP lenders in all types and phases of small to complex business bankruptcy, reorganization, workout, debt restructuring, creditors' rights and related litigation matters throughout the country.

- Former Chapter 7 Panel Trustee for the Northern District of Texas
- Served as a debtor co-counsel in the Energy Futures Holding, Inc., et al., Chapter 11 case
- Represented the City of Fort Worth and the Alliance Airport Authority, Inc. in the American Airlines Chapter 11 case
- Represented creditors in some of the largest retail Chapter 11 cases filed over the last few decades (e.g., Best Buy, Linens & Things, Radio Shack, Borders, Urban Brands, Circuit City, Movie Gallery, Ducane Gas Grills)
- Defended major U.S. corporations in scores of bankruptcy preference actions across the nation including a multimillion dollar preference matter against a major multinational corporation that was settled on extremely favorable terms for the client
- Successfully tried several fraud complaints on behalf of bank/savings and loans institutions including a complaint resulting in a multi-million dollar judgment in connection with first bank to close in Fort Worth since the Depression
- Represented major bank in Chapter 11 proceeding of one of the first subprime lender Chapter 11 cases; secured lender's claim totaling in excess of \$20 million was paid in full
- Represented the FDIC as a secured creditor in Chapter 11 reorganization cases involving office buildings, shopping centers, manufacturing concerns and/or oil and gas operations

- Represented major investor and secured creditor in Chapter 11 reorganization of television/movie syndication business resulting in confirmation of Chapter 11 plan
- Represented consortium of private equity secured lenders in successful Chapter 11 reorganization of a Florida-based wireless phone carrier resulting in confirmation of Chapter 11 plan
- Represented shopping center owners in chapter 11 case of national restaurant chain (Golden Corral) resulting in recovery of unpaid rent, taxes and CAM charges as well as the favorable resolution of contentious litigation regarding a rent dispute.

Associations

- Member, Dallas Bar Association
- John Ford Inns of Court
- J.L. Turner Legal Association
- Texas Bar Foundation
- American Creditors Association

Education

- Juris Doctor, Columbia University School of Law, 1981
- Bachelor of Arts, Princeton University, 1978

Community

Board Member and/or Past Officer:

- Texas Public Finance Authority
- Alcuin School
- Baylor Hospital System Foundation
- North Texas Volunteer Center
- Goodwill Industries
- Dallas Historical Society
- Dallas Symphony
- Mental Health Assn. of Dallas
- Head Start
- President's Advisory Committee, Dallas Center for the Performing Arts

Honors

- Selected in "Best Lawyers in Dallas" list, D Magazine, 2018, 2020
- Selected as one of the "Texas' Top Rated Lawyers for 2014 in Bankruptcy" by Legal Leaders Magazine
- AV rated by peers (highest possible rating in both legal ability and ethical standards), 1990-2020